

REMARKS

Paragraph 1 of the Office action indicates that “Applicant’s election without traverse of Group I, Species I, claims 1-7, 9-22 and 24-25 . . . is acknowledged.” Applicants’ election without traverse only extended to Group I. Applicants did traverse the requirement of an election of species within Group I. More particularly, in response to the Office action, applicants elected, without traverse, Group I, claims 1-45, drawn to a singulating device. Claims 46-73 were cancelled. Applicants further elected, in response to paragraph 6 of the restriction requirement, Species I, represented by Figures 1-11 and 14A. It was submitted that the claims which read on Species I were claims 1-7, 9-22, and 24-45. Accordingly, claims 8 and 23 were withdrawn although Applicants traversed the requirement that an election of species be made. **No response to that traversal has been supplied in the instant Office action.**

Applicants submitted in the response to the restriction requirement, and resubmit here, that independent claims 1 and 17 are generic with respect to the requirement to elect between Species I, II, III and IV inasmuch as claims 1 and 17 do not recite a separation device. Further, it is respectfully submitted that the claims 6 (which depends from claim 1) and 21 (which depends from claim 17) are generic inasmuch as they simply recite a “separation device” without specifying the type of separation device. Because of the presence of such generic claims, it is respectfully submitted that the species claims 7 and 22 which are directed to a guide, and dependent claims 8 and 23 which are directed to a slide, represent a reasonable number of species claims and therefore those claims should be allowed to proceed in the instant application. Applicants note that currently there is no dependent claim directed to Species II, Fig. 14B, which illustrates a funnel as the separation device. Should the examiner agree that claims 1, 6, 17 and 21 are generic claims and that applicants are entitled to a reasonable number of species claims, applicants intend to add dependent claims directed to the embodiment of Fig. 14B which illustrates a funnel as the separation device. **The Office has failed to comment on applicants’ argument that claims 1, 6, 17 and 21 are generic and that applicants are entitled to a reasonable number of species claims.**

As applicants noted in the response to the restriction requirement, and note here again, Species III, Figs. 1-11 and 14C, and Species IV, Fig. 15, are believed to represent the same species. Fig. 14C illustrates a slide as the separation device whereas Fig. 15 also illustrates a slide, of somewhat different configuration, as the separation device. As both of these species reference figures illustrating slides as separation devices, it is respectfully submitted that withdrawn claims 8 and 23 read on both Species III and Species IV.

Furthermore, in the response to the restriction requirement, only claims 8 and 23 from within Group I (claims 1-45), were provisionally withdrawn, with traverse. In the instant Office action, claims 9 and 24 are withdrawn "as being directed to non-elected Species IV." The Office's position is not understood. Species IV is represented by the embodiment shown in FIG. 15. However, claims 9 and 24 are directed to the metering device, not the separation device. Therefore, the Office's position that claims 9 and 24 are directed to non-elected Species IV is not understood. Clarification is respectfully requested.

In paragraph 2 of the Office action, the amendment filed on October 17, 2003 is objected to under 35 U.S.C. §132 because it allegedly "introduces new matter into the disclosure". At the time the preliminary amendment was filed, applicants made clear in the remarks that the amendments were made to conform the specification to the priority document, U.S. provisional application serial no. 60/428,580 filed November 22, 2002, entitled Hinged Medicine Bottle Closure. The amendment is appropriate inasmuch as a proper priority claim was made and the priority application was incorporated in its entirety by reference. The Office has not demonstrated that the applicant is not entitled to conform the present application to the priority document. Applicants request a clarification of the Office's position.

In paragraph 4 of the Office action, independent claims 1 and 17 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,377,648 (Culbert '648). It is respectfully submitted that the Office has misconstrued the teachings of Culbert.

It is the Office's position that Culbert '648 discloses "a lower plurality of blades 30/40/50 (figure 2) cooperating to define an exit aperture from said housing." It is respectfully submitted that the Office has ignored the plain language of Culbert '648. Rather than being blades, elements 30, 40, and 50 are rotors. See column 2, line 37. These rotors 30, 40, 50 do not cooperate to define an exit aperture but rather cooperate to define a path through the device.

The path of a pill taken in the pill counting machine 10 shall now be described. During operation, the pill is placed in the pill-receiving portion 22 of the funnel 20 (along with other pills). As the pill reaches the opening 26 of the neck portion 24, the pill will either (1) fall into a hole 36 of the first rotor 30 positioned directly underneath or (2) contact a top interhole surface 38 of the first rotor 30, thereby remaining in the neck portion 24 of the funnel 20 until a hole 36 is positioned directly underneath as the first rotor 30 continues to rotate. When the pill falls into the hole 36, the top surface 42 of the second rotor 40 prevents the pill from falling further. As the first rotor 30 continues to spin, the pill is carried in the hole 36 of the first rotor 30 until the hole is aligned with the single orifice 46 of the second rotor 40. At that point, the pill falls from the hole 36 of the first rotor 30 into the single orifice 46 of the second rotor 40. At that same instance, the top interopening surface 52 of the third rotor surface 58 is directly below the single orifice 46 of the second rotor 40. As the third rotor 50 continues to rotate, the single orifice 46 of

the second rotor 40 is vertically aligned with a chamber 56 opening in the third rotor 50, permitting the pill to fall through the opening into a chamber 56 of the third rotor 50. The pills may then be removed using the trap door 55.

See column 4, line 62 through column 5, line 18.

It is respectfully submitted that Culbert '648 clearly teaches rotors, having openings therethrough, which when properly aligned define a path through the device. Such structure in no way anticipates a plurality of blades which cooperate to define an exit aperture. See, for example, blades 57 and 59 shown in applicants' FIG. 5. The openings 68 in blades 57 and 59 cooperate to define an exit aperture 62, not a path through the device. It is respectfully requested that the rejection of claims 1 and 17 as being anticipated by Culbert '648 be withdrawn.

In paragraph 5 of the Office action, independent claim 17 is rejected under 35 U.S.C. §102(b) as being anticipated by Benarrouch 5,549, 217. It is the Office's position that Benarrouch '217 discloses a device comprised of "a lower blade (lowest blade 3, figures 9-14) carried within said housing and set off from said upper metering device to define a chamber there between, said lower blade controlling the exit aperture." It is respectfully submitted that the Office has disregarded the plain teachings of Benarrouch '217. The element referred to by the reference numeral (3) in Benarrouch '217 is not a lower blade. Rather, the device of Benarrouch is constructed of two cylindrical parts, A and B, which are symmetrical relative to a spindle (2) connecting them by the center. Parts A and B are identical and each consists of sectors of cylinders (3). These cylindrical sectors are concentric, equal to one another, and cut vertically from the thickness of the part, and are separated from one another by openings (4). See column 3, lines 47-56. As shown in FIG. 3, parts A and B are separated by a cylindrical roundel (6). The cylindrical parts A, B and the roundel (6) are not blades. Furthermore, parts A, B, and roundel (6) cooperate to define a path through the device, not to control an exit aperture.

The operation of this granule dispenser is illustrated in FIGS. 9 to 14. Firstly, the tube is inverted so that the receptacle is pointing downward. Through gravity, the granules (15) become positioned in all the sectors of cylinders (4) of the part A of the dispensing body (1), as represented in FIGS. 9 and 12. Next, as can be seen in FIGS. 10 and 13, as soon as one of the sectors of cylinders (4) of the part A of the dispensing body (1) is in register with the granules passage consisting of the recess (8) of the roundel (6), a first granule (15) drops under gravity into said passage and remains on standby on the upper face of a solid sector of the part B, while a second granule becomes superimposed on the first in the empty sector of cylinder (4) of the part A of the dispensing body (1).

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After having turned the receptacle (11) through a third of a turn, the first granule (15) falls into said receptacle (11), while the second is driven over the roundel (6) by one of the two solid sectors of cylinders (3) of the part A of the dispensing body (1). This rotation brings one of the solid sectors of cylinders (3) of the part A back into a position where it closes the passage (8) in the roundel (6) and brings one of the empty sectors of cylinders (4) of the part B back into a position where it opens said passage (8), which allows the first granule to drop into the receptacle.

See column 5, line 6-29.

It is respectfully submitted that Benarrouch '217 fails to disclose a lower blade controlling an exit aperture. For that reason, it is respectfully requested that the rejection of claim 17 as being anticipated by Benarrouch be withdrawn.

At this time applicants choose not to respond to the rejection of the dependent claims on the basis of 102 and 103 inasmuch as it is believed that the independent claims, claims 1 and 17, have been demonstrated as being allowable. Applicants reserve the right to respond to the rejection of the dependent claims at a later date should that become necessary.

Finally, applicants note that on 29 November 2003 an Information Disclosure Statement was mailed in connection with this application. A courtesy copy of the International Search Report as received in connection with a foreign counterpart application was also enclosed for the convenience of the Examiner. It is noted that the courtesy copy of the search report listed several patents, one of which, U.S. Patent No. 3,392,853, was inadvertently omitted from form PTO/SB/08A. A PTO/SB/08A is enclosed herewith listing the reference (U.S. Patent No. 3,392,853) which was identified in the search report but not listed on the previously filed Form PTO/SB/08A. Inasmuch as the '853 patent was identified in the search report previously submitted to the Office, it is respectfully submitted that the submission of the form PTO/SB/08A at this time is merely for the convenience of the Office so that the Office's records will correctly reflect all of the references which have been submitted and considered.

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Applicants have made a diligent effort to place the instant application in condition for allowance. It is respectfully requested that applicants be entitled to a reasonable number of species such that claims 8 and 9 as well as claims 23 and 24 may remain in the application. Applicants further request that a notice of allowance for claims 1-45 be issued. If the Examiner is of the opinion that the instant application is in condition for disposition other than through allowance, the Examiner is respectfully requested to contact applicant's attorney at the telephone number listed below so that additional changes may be discussed.

Respectfully submitted,



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